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September 15, 2006

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**Re: Petition to Appeal Regional Board's Rejection of Permit Application for
Bajagua, LLC**

Dear Ms. Jennings:

This letter responds to your e-mail to me dated September 13, 2006, in which you (1) acknowledged receipt of an e-mailed and hard copy of Bajagua's Petition to Appeal Regional Board's Rejection of Permit Application for Bajagua, LLC ("Petition"), but (2) indicated that the Petition is missing "several items" required by the regulations of the State Water Resources Control Board ("State Board"). 23 C.C.R. § 2050. Your e-mail requested that we submit a list "by the numbers in the regulation" identifying the information required by the rule.

In response to your request, we provide the following list which either adds the information requested, or indicates where the information is located in the Petition. We trust that this information will assist you in reviewing the Petition. This letter supplements, but does not replace the Petition, and we request that the letter be a part of and incorporated into the Petition.

Background Discussion

Before identifying the information you have requested, we would like to provide a brief overview of the facts in this matter. The Petition contains a more-detailed discussion of the background facts. First, we wish to reiterate that the Petition concerns the ROWD/NPDES permit application submitted on March 27, 2006, by Bajagua with Bajagua listed as the permit applicant. Some confusion appears to have arisen because Bajagua also submitted a permit application with the International Boundary and Water Commission ("IBWC") listed as the permit applicant (the "IBWC permit application"). The IBWC permit application is not the subject of the Petition.

Elizabeth Miller Jennings Esq.
September 15, 2006
Page 2

As discussed more fully in the Petition, the Bajagua project envisioned by federal law and an international treaty with the Republic of Mexico (Treaty Minute 311), will involve the construction by Bajagua of a wastewater treatment facility in Mexico. At that facility, Bajagua will treat, to secondary treatment standards, the 25 million gallons per day ("MGD") of wastewater after it is treated to advanced primary standards by the IBWC at the International Wastewater Treatment Plant ("IWTP") and an additional 34 MGD of wastewater collected in Mexico that otherwise would flow untreated into the Tijuana River to the Pacific Ocean. Pursuant to federal law and Treaty Minute 311, the wastewater treated at the Bajagua facility will be piped directly from that facility to the South Bay Ocean Outfall for discharge to the Pacific Ocean.

Consequently, once the Bajagua facility is operating, there will be no direct discharge to the Pacific Ocean or any other body of water from the IWTP. Instead, there will be a single discharge from the Bajagua facility that will meet existing water quality standards, unlike the current discharge from the IWTP. As discussed in detail in the Petition, because Bajagua will operate the secondary treatment facility, and will be responsible for the quality of the discharge to the Pacific Ocean, Bajagua is the proper entity to receive the necessary waste discharge requirements and NPDES permit from the Regional Board.

Requested Information

1. Name, address, telephone number and email address (if available) of the petitioner).

The Petitioner is the Bajagua LLC, and its mailing address is Bajagua LLC, c/o Jim Simmons, 160 Industrial Street, Suite 200, San Marcos, CA 92078. Mr. Simmons' telephone number is (760) 471-2365, and my direct telephone number is (619) 515-3217.

2. The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition, if available. If the order or resolution of the regional board is not available, a statement shall be included giving the reason(s) for not including the order or resolution.

The "specific action or inaction of the Regional Board" which Bajagua is requesting that the State Board review is the decision by the San Diego Regional Water Quality Control Board ("Regional Board") not to process Bajagua's ROWD/NPDES permit application. (*See, e.g.*, Petition at 6: 14-17). No order or resolution of the Regional Board has been included with the Petition because the Regional Board has not issued an order or resolution. However, letters from the Executive Officer of the Regional Board explaining the Regional Board's decision to not process the Bajagua permit application are attached to the Petition. Further clarification of this issue is provided below.

Elizabeth Miller Jennings Esq.
September 15, 2006
Page 3

On March 27, 2006 Bajagua filed two ROWD/MPDES permit applications. One listed *Bajagua* as the permit applicant and one listed the *IBWC* as the permit applicant. On April 27, 2006 the executive officer of the Regional Board wrote to IBWC Acting Commissioner Carlos Marin indicating that the Regional Board was rejecting as incomplete both permit applications submitted by Bajagua on March 27, 2006. The Executive Officers April letter stated that the *IBWC* permit application was incomplete because it had not been signed by the IBWC. However, the letter stated that the *Bajagua* permit application was considered incomplete because "it is not clear that Bajagua ... is subject to the jurisdiction of the state under the terms of the Porter-Cologne Water Quality Control Act" On May 24, 2006, Bajagua filed a petition with the State Board to appeal the Regional Board's refusal to process the *Bajagua* permit application that was submitted on March 27, 2006.

On May 31, 2006, you sent a letter to me rejecting the *Bajagua* petition (the "May Petition"). In your letter you made certain conclusions regarding the executive officer's April letter that we would like to address. First, your letter stated that the Executive Officer's April letter "explains why he questions whether your client was authorized to sign the ROWDs and asks several questions, which appear intended to determine whether the signature is adequate." However, the questions raised in the April letter regarding the signature applied to the *IBWC* permit application, not the *Bajagua* permit application. As stated above, the only objection raised in the April letter to the IBWC concerning the *Bajagua* permit application was jurisdictional in nature.

Second, your letter states that the Executive Officer's April letter "is addressed to the applicant listed on the ROWDs." That also was not the case. The April letter was addressed to the IBWC, not to Bajagua. The IBWC was not the permit applicant on the Bajagua permit application.

In fact, the Regional Board's first direct letter to Bajagua regarding its permit application was the Executive Officer's letter to Bajagua dated August 21, 2006. That letter is the basis for this Petition. In that letter, the Executive Officer stated that *Bajagua's* permit application "is not needed" because the IBWC is the proper permittee. Although the August letter also referred to the *IBWC* permit application as being incomplete, the IBWC permit application is not the subject of the Petition. Nothing indicates that the Regional Board's position on this issue will change, even though the Regional Board has been provided with a copy of the May Petition and this Petition, which both explain the reasons why Bajagua is subject to the jurisdiction of the state and is the proper permittee for the discharge from the Bajagua wastewater treatment facility. The May Petition alone addressed the concern raised by the Regional Board in the Executive Officer's April letter.

By law, if a Regional Board rejects an application as incomplete, it must "specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to

Elizabeth Miller Jennings Esq.
September 15, 2006
Page 4

complete the application.” Gov’t Code § 65943(a). Instead of receiving a “list and thorough description of the specific information needed to complete the application,” all Bajagua received from the Regional Board was a statement that *Bajagua’s* permit application “is not needed.” That language clearly indicates that the Regional Board has made a final decision that should be reviewed by the State Board.

3. The date on which the regional board acted or refused to act or on which the regional board was requested to act.

The date on which the Regional Board refused to act on Bajagua’s application was August 21, 2006, the date of the letter sent by the Regional Board’s Executive Officer to Mr. Simmons of Bajagua. (*See* Petition at 6: 14-17). Again, this was the first direct letter from the Regional Board to Bajagua regarding the *Bajagua* permit application. A copy of that letter is included as Exhibit H to the Petition.

4. A full and complete statement of the reasons the action or failure to act was inappropriate.

The requirement that a petition provide a “full and complete statement of the reasons the action or failure to act was inappropriate or improper” has been satisfied with the detailed discussion of the issue contained in the Memorandum of Points and Authorities that is part of the Petition, and the discussion of the issues in other sections of the Petition and in this letter.

5. The manner in which the petitioner is aggrieved.

As stated throughout the Petition, (*see, e.g.*, Section II of the Petition) and in this letter, Bajagua has been aggrieved by the Regional Board’s refusal to process Petitioner’s ROWD/NPDES permit application. Bajagua has invested, and proposes to invest, millions of dollars to construct a wastewater treatment facility to improve water quality in the Tijuana River and in the discharge to the Pacific Ocean. However, without a ROWD/NPDES permit issued by the Regional Board, Bajagua would not be able to operate the wastewater treatment facility as envisioned in federal law, Treaty Minute 311, Bajagua’s Development Agreement with the IBWC, and in compliance with state law.

6. The specific action by the state or regional board which petitioner requests.

The Petitioner requests that, pursuant to 23 C.C.R. section 2052(a)(2)(C), the State Board “direct the Regional Board to process *Bajagua’s* permit application as required by law.” (Petition at 6: 27-28). This may require that the State Board confirm that the Regional Board has jurisdiction over Bajagua (a discharger of waste to the water of the State). It is this jurisdictional issue which was used as the basis for the Regional Board’s refusal to act as required by law. Given the particular nature of this legal issue, the State Board is the proper entity to resolve this legal conflict.

Elizabeth Miller Jennings Esq.
September 15, 2006
Page 5

7. A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing where appropriate.

As your email acknowledges, a Memorandum of Points and Authorities is included in the Petition. There are no references to a transcript in the Petition because the Regional Board has refused to process *Bajagua's* permit application and thus there was no draft permit to take to a public hearing.

8. A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner.

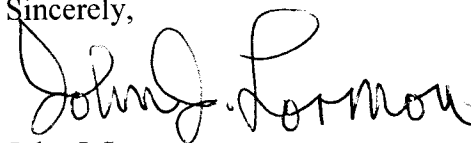
A copy of this Petition has been provided to the Regional Board.

9. A statement that the substantive issues or objections raised in the petition were raised before the regional board, or an explanation of why petitioner was not required or was unable to raise these substantive issues or objections before the regional board.

The discussion throughout the Petition, but specifically in Section II of the Petition, indicates that the Petitioner has raised substantive issues and objections with the Regional Board concerning its decision to not process the Bajagua ROWD/NPDES permit application. In fact, the May Petition also was provided to the Regional Board. In addition, I have personally attended meetings or held telephone conferences with the Executive Officer and the Regional Board's counsel, during which the substantive issues and objections raised in the Petition were discussed.

We trust that this letter provides you with the necessary information in the format you requested. If you have any further questions, or would like additional information, please contact me.

Sincerely,



John J. Lormon

JJL:mkk

cc: John H. Robertus, Executive Officer
Regional Water Quality Control Board, San Diego Region